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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

5

6 | In the Matter of:

7

8 | DELPHI CORPORATION

9

10 **Debtor.**

11

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14 United States Bank

15 One Bowling Green

16

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18 July 19-

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22 HON. ROBERT D. BRATN

23 U.S. BANKRUPTCY JUDGE

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2 HEARING re Debtors' Motion for an Order Under Section 105 and
3 363 Authorizing Implementation of Key Employee Compensation
4 Program

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6 HEARING re Motion for an Order Authorizing Official Committee
7 of Unsecured Creditors to Prosecute Debtors' Claims and
8 Defenses Against General Motors Corporation and Certain Former
9 Officers of the Debtors

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11 HEARING re Ex Parte Motion for Order Authorizing Official
12 Committee of Equity Security Holders to File Under Seal
13 Supplemental Objection to the Motion for an Order Authorizing
14 Official Committee of Unsecured Creditors to Prosecute Debtors'
15 Claims and Defenses Against General Motors Corporation and
16 Certain Former Officers of the Debtors

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2 HEARING re Expedited Motion for Orders Under 11 U.S.C. Section
3 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014
4 (A) (i) Approving Bidding Procedures, (ii) Granting Certain Bid
5 Protections, (iii) Approving Form and Manner of Sale Notices,
6 and (iv) Setting Sale Hearing Date and (B) Authorizing and
7 Approving (I) Sale of Delphi Automotive Systems LLC's Mexico
8 Brake Plant Assets Free and Clear of Liens, Claims, and
9 Encumbrances, (ii) Assumption and Assignment of Certain
10 Executory Contracts and Unexpired Leases, and (iii) Assumption
11 of Certain Liabilities

12

13 HEARING re Motion for an Order Pursuant to B.R. 9019 Approving
14 Settlement Agreement Between Wachovia Bank and Lextron
15 Corporation

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17 HEARING re UAW 1113/1114 Settlement Approval Motion

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19 HEARING re DASE Funding Motion

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21 HEARING re Motion of Furukawa Electric North American APD and
22 Furukawa Electric Co., Ltd. for a) Abstention Pursuant to 28
23 U.S.C. Section 1334(c); b) Relief from Automatic Stay Pursuant
24 to 11 U.S.C. Section 362(d); and c) an Order Limiting Scope of
25 Third Omnibus Claim Objection Hearing

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2 HEARING re Debtors' Sixteenth Omnibus Objection Pursuant to 11
3 U.S.C. Section 502(b) and Fed. R. of Bank. P. 3007 to Certain
4 a) Duplicate or Amended Claims; and b) Protective Claims

5

6 HEARING re Debtors' Seventeenth Omnibus Objection (Substantive)
7 Pursuant to 11 U.S.C. Section 502(b) and Fed. R. of Bank. P.
8 3007 to Certain a) Insufficiently Documented Claims; b) Claims
9 Not Reflected on Debtors' Books and Records; c) Insurance Claim
10 Not Reflected on Debtors' Books and Records; d) Untimely Claims
11 and Untimely Tax Claims; and e) Claims Subject to
12 Modifications, Tax Claims Subject to Modification and Modified
13 Claims Asserting Reclamation

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Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

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THE COURT: Please be seated. Okay. Delphi
Corporation?

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5 MR. BUTLER: Your Honor, good morning. Jack Butler
6 and Kayalyn Marafioti and Tom Matz with other of our colleagues
7 here from the Skadden firm on behalf of Delphi Corporation for
8 its proposed omnibus hearing. We filed that agenda, Your
9 Honor, with the Court. We'd like to take the matters in the
order of the agenda.

10

THE COURT: Okay. That's fine.

11

12 MR. BUTLER: Your Honor, the first matter on the
13 agenda, matter number 1, is our motion for an order under
14 Section 105 and Section 363 authorizing the implementation of a
15 key employee compensation program. This was originally filed
16 at docket number 213. And this is the date and time that was
17 in a previously scheduled -- entered scheduling order that
18 was -- the court indicated we should come back for the second
19 half of 2007 performance payment program. That was a date that
20 was included in the March 29th, 2007 order filed at docket
21 7474. And Your Honor may recall that in the subsequent
22 discussions with the Court and some of the chambers meetings,
23 we'd indicated that depending on the timing of the plan that
those issues would be addressed under a plan of reorganization.

24

25 Given our current timetable and the expectation to
emerge from Chapter 11 at the end of this year which would call

1 for a confirmation hearing into the mid to late part of the
2 fourth quarter, we concluded -- the company, that's too far
3 into this period to wait to deal with the performance elements
4 of this period. So we are meeting with -- the subcommittee of
5 the creditors' committee is responsible for dealing with these
6 issues and we would expect to have, as we have in the past, a
7 consensual program to bring before the Court, and we've
8 concluded that it's appropriate to do that at the September
9 27th omnibus hearing if that's acceptable to Your Honor.

10 THE COURT: Okay. That's fine.

11 MR. BUTLER: Your Honor, matters number 2 and 3 on
12 the agenda deal with the STN litigation. Matter 2 is the
13 creditors' committee GM claims and defenses motion at docket
14 number 4718. And matter number 3 is the companion motion from
15 the equity committee involving procedural matters at docket
16 number 5229. And we've agreed to adjourn the STN matters again
17 and carry them this time to the August 16th omnibus hearing.

18 THE COURT: Okay. As previously, you'll let us know,
19 though, if it's -- with appropriate warning if that's really
20 going to be a live issue at that hearing?

21 MR. BUTLER: Your Honor, you'd indicated to the
22 parties in prior times that if in fact that's going to go
23 forward that we need to come talk with you in chambers -- have
24 a chambers conference before that would actually go forward and
25 we would -- Mr. Rosenberg and I are aware of that. We would

1 notify you and consult with Ms. Steingart and schedule
2 something in advance of that hearing.

3 THE COURT: Okay. That's fine.

4 MR. BUTLER: Your Honor, that takes us to a series of
5 uncontested matters. The first that I'd like to deal with is
6 the Mexico Brake asset sale motion at docket number 8249. This
7 is the second part of a two-step process to approve the sale of
8 these assets. The -- Bosch is the purchaser. The price is 15
9 million dollars subject to the adjustments in the purchase
10 agreement. Your Honor, we have followed the scheduling
11 requirements of your prior order. There were no alternative
12 bids so there was no auction held. We have given notice of the
13 assumption and assignment to approximately twenty-four
14 contracts. We've given notice of cure with respect to
15 approximately ten cure amounts. There have been no objections
16 to cure filed in connection with that matter.

17 THE COURT: Or to assumption and assignment?

18 MR. BUTLER: Excuse me? Or to the assumption and
19 assignment.

20 THE COURT: Okay.

21 MR. BUTLER: So we've had no objections to any of
22 these matters and as a result of that, Your Honor, and given
23 the fact this has been reviewed with the statutory committees
24 we rely on the papers that we filed and ask Your Honor to enter
25 the relief that would allow us to complete the sale of these

1 assets.

2 THE COURT: Okay. Does anyone have anything to say
3 on this motion? All right. I'll grant the motion for approval
4 of the sale as well as for approval of the assumption and
5 assignment of the contracts pursuant to the sale agreement.
6 The motion itself sets forth the business reasons for the
7 transaction and I previously approved an auction process. This
8 is the highest and best bid. And the lack of any objection by
9 any party in interest confirms that the debtors' business
10 judgment is appropriate here.

11 MR. BUTLER: Thank you, Your Honor. Your Honor, the
12 next matter on the agenda, matter number 5, is the Wachovia
13 Bank and Lextron Corporation settlement at docket number 8434.
14 Mr. Berger represented Delphi in connection with the
15 settlement and is here to present it to the Court.

16 MR. BERGER: Good morning, Judge. Neil Berger,
17 Togut, Segal & Segal. On Your Honor's calendar this morning is
18 the motion by the debtors for an order pursuant to Bankruptcy
19 Rule 9019 for an order approving the settlement agreement among
20 the debtors, Wachovia and Lextron Corporation. Notice of this
21 motion was given to all the parties on the masters service
22 list, the Internal Revenue Service and the U.S. Attorney, for
23 reasons that I'll describe in a moment.

24 Your Honor, just by way of short background, you may
25 recall that Wachovia and Lextron both filed proofs of claim in

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1 this case. Wachovia came before the Court seeking relief from
2 the stay to have its claim liquidated in a Mississippi state
3 court. Your Honor denied that motion. We returned to
4 mediation under the supervision of retired bankruptcy judge
5 Francis Conrad, this time with Lextron. Together Wachovia and
6 Lextron had claims to the face amounts of about seven million
7 dollars although Lextron asserted in its state court proceeding
8 that its claim could exceed that by some far multiple.

9 In the end, Your Honor, as a result of good faith
10 negotiations during the mediation, the parties were able to
11 reach a settlement. The Wachovia claim is being reduced from
12 approximately 6.6 million dollars to 500,000 dollars. The
13 Lextron claims are being withdrawn with prejudice in their
14 entirety.

15 The Lextron proof of claim in this case was subject
16 to a lien in favor of the Internal Revenue Service. Delphi and
17 the other parties to the settlement agreement wanted to
18 confront any collateral issue or objection from the Internal
19 Revenue Service, U.S. Attorney representing them, now rather
20 than after consummation of the settlement agreement. For that
21 reason, Your Honor, we did serve the Internal Revenue Service
22 and the assistant United States attorney who represented the
23 government in connection with the liens against Lextron. There
24 is a substantial reduction of unsecured claims. That was
25 achieved in this Court and in mediation. Claims were being

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1 withdrawn. The appeal from Your Honor's stay order is going to
2 be withdrawn. The federal and state court proceedings in
3 Mississippi will be terminated and the parties are going to
4 exchange mutual releases as to these issues. We did serve
5 notice and we have no objections, Judge.

6 THE COURT: And the releases will cover the
7 individual defendants as well --

8 MR. BERGER: Yes, Judge.

9 THE COURT: -- the present and former Delphi
10 employees?

11 MR. BERGER: Correct, Judge, yes.

12 THE COURT: Okay. All right. Does anyone want to
13 address this settlement? I'll approve the settlement in light
14 of its being reasonable and unopposed by any party in interest.

15 MR. BERGER: Thank you, Judge. I have an order I can
16 hand up at the end of the hearing.

17 THE COURT: That's fine.

18 MR. BUTLER: Your Honor, the next matter on the
19 agenda, matter number 6, is the UAW 1113/1114 settlement
20 motion. This is filed at docket number 8445. Other than a
21 letter response from a Ms. Kelly Hurley, which is at docket
22 number 8613, this matter is uncontested. Your Honor, in terms
23 of the evidentiary record, I would like to pass up and ask Your
24 Honor to move into evidence the declaration of John Sheehan,
25 the company's chief restructuring officer, and the declaration

1 of Kevin M. Butler, the company's lead bargainer in connection
2 with this matter.

3 THE COURT: Those were filed the other day?

4 MR. BUTLER: These were provided to the Court the
5 other day. We don't file the declarations in this --

6 THE COURT: All right.

7 MR. BUTLER: -- matter. And I would point out, Your
8 Honor, in the actual declaration here, there was a
9 typographical -- in Mr. Butler's declaration, there was a
10 typographical mistake so we changed a word from -- "should be
11 read to" to "should be clarified." Just a small word but it
12 was an important one.

13 THE COURT: Okay. Does anyone have any objection to
14 the introduction of these two declarations?

15 MS. CECCOTTI: No, Your Honor. With those
16 clarifications, it's fine with UAW.

17 THE COURT: Okay. That's fine. So they'll be
18 admitted.

19 MR. BUTLER: Your Honor, I do, at this point having
20 presented those, I do want to introduce to the Court Mr.
21 Sheehan and Mr. Butler who the Court knows from prior hearings.
22 Mr. Sheehan, please stand and, Mr. Berger, the bargainer, and
23 Your Honor, they are available for cross-examination with
24 respect to their declarations.

25 THE COURT: Okay. Does anyone want to cross-examine

1 either Mr. Sheehan or Mr. Butler on their declarations in
2 support of the settlement? Okay. Hearing no one, I'll accept
3 the declarations, which I've read.

4 MR. BUTLER: Thank you, Your Honor.

5 THE COURT: I also read the revised proposed order
6 that was submitted.

7 MR. BUTLER: And, Your Honor, there is, with respect
8 to the revised proposed order, again, one typographical matter
9 that we sorted out with Wilmington Trust. At paragraph 10, in
10 the seventh line, there was a reference to any interested party
11 and it should have read any "party interest" as it did in the
12 attrition orders. That's the only change from the blacklined
13 order that we had put in place.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, I also indicated I would
16 state on the record something that's been of particular
17 interest to Wilmington Trust over these proceedings. And I'd
18 simply acknowledge that the statements in our motion regarding
19 the ownership of assets involving Delphi Corporation are not in
20 and of themselves binding on all the parties simply because we
21 stated them in our motion.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, in terms of the proposed
24 form of order, it is a requirement of the settlement that the
25 form of order that's presented to the bankruptcy court be

1 acceptable in all respects to each of the UAW and General
2 Motors. I'd ask their counsel to please indicate on the record
3 the acceptability of the proposed order.

4 MS. CECCOTTI: Your Honor, Babette Ceccotti, Cohen,
5 Weiss and Simon again for the UAW. The proposed form of order
6 including Mr. Butler's representation concerning the typos is
7 acceptable to the UAW.

8 THE COURT: Okay.

9 MR. ROSENBERG: Good morning, Your Honor. Robert
10 Lemons from Weil Gotshal & Manges on behalf of General Motors.
11 The proposed order as amended by Mr. Butler's comments this
12 morning is acceptable to General Motors.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, in terms of presenting the
15 bona fides of the settlement of the Court, this is the
16 settlement of an 1113/1114 process that began with motions
17 filed last year and with a contested hearing conducted by the
18 Court over a series of weeks that while suspended was suspended
19 at a time where at that point in time the company's case-in-
20 chief had been submitted to the Court. So there is before the
21 Court and as part of this process, there is a record and a lot
22 of evidence in terms of the cross-examination by the UAW and
23 other issues relating to that. But there is a record that
24 leads to the bona fides underlying some of the business reasons
25 for this.

1 This is a settlement and it's intended to be a
2 comprehensive settlement of that motion that was filed. From
3 the company's perspective, we think we have laid out in the
4 motion the business reasons for it as well as in the
5 declarations. They have been reviewed in detail with both
6 General Motors and with the UAW. Unless Your Honor has
7 questions as to those specific issues, I frankly think in a
8 labor settlement that less is more in terms of trying to
9 characterize what's been a very carefully discussed set of
10 papers that all parties agreed to.

11 I would point out, Your Honor, one thing which I
12 think is important and which is an element of the settlement.
13 And that is, that the UAW and General Motors and Delphi
14 Corporation, for reasons that were important to each of them
15 and serving each of their individual interests, carefully
16 negotiated what would become immediately effective and what
17 would become effective upon certain conditions subsequent
18 including the completion of the definitive GM settlement and
19 the consummation -- the confirmation and consummation of the
20 plan of reorganization that would implement supplement and the
21 balance of the UAW settlement. And there were distinct reasons
22 why each element was either to go effective immediately now or
23 later.

24 I would point out that in terms of the company's
25 transformation objectives, one of the things that the parties

1 all agreed to is that the site plans and the site agreements
2 and the undertakings of all three parties with respect to the
3 twenty-one sites that are in Exhibits A and A-1 to the
4 Memorandum of Understanding become immediately effective. And
5 that's an important part of the transformation and there were
6 assurances from both Delphi and the General Motors to the UAW
7 with respect to those locations that were an integral part
8 obviously of the settlement. And those, among other things,
9 become immediately effective as do the amendments to the
10 collective bargaining agreement. And just to, from my
11 perspective, Your Honor, that causes us -- one other element I
12 should point out with respect to the settlement is that the
13 settlement and the order that's being entered today, Your
14 Honor, does not cause these agreements to be assumed, the
15 rights of the parties are preserved for the balance of the case
16 and these would become effective on the effective -- it would
17 be assumed on the effective date of a plan pursuant to the
18 terms of the settlement. And I wanted to point that out to
19 Your Honor.

20 Obviously, under 1113 --

21 THE COURT: I assume, under 1123 and 365?

22 MR. BUTLER: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. BUTLER: And obviously, Your Honor, I wanted to
25 point out to the Court, having agreed that the amendments to

1 the collective bargaining agreement would become immediately
2 effective even though that contract is not assumed, means that
3 under 1113/1114 from the debtors' perspective, as to the
4 obligations that debtors have under each of those statutes --
5 provisions of the Bankruptcy Code, we'll continue to have those
6 obligations as it relates to the now modified agreements if
7 Your Honor approves that.

8 So, I think, Your Honor, we have created a set of
9 circumstances that permits this settlement to be presented to
10 Your Honor. We're very pleased that after having gone through
11 due diligence and reviewed matters with both of our statutory
12 committees that the committees believe this is an appropriate
13 settlement and they have not objected to it. This is obviously
14 the progress of a lot of work that, in some respects, has
15 become transparent to Your Honor over the series of meetings
16 and hearings we've had over the year -- the last eighteen
17 months or so. And we're pleased to be in a position to be able
18 to present this to the Court for its consideration.

19 THE COURT: Okay. All right. I had two relatively
20 small questions about the order and I guess, relatedly, the
21 settlement. I don't believe this is -- I think I understand
22 the meaning of this but I want to just make sure it's clear on
23 the record. Paragraph 8 of the order describes the treatment
24 of the CHR claim and, you know, sort of the ongoing obligation
25 in respect of that. And it says that the UAW will have an

1 allowed claim of 140 million subject to adjustment. And then
2 further in the paragraph, after talking about the allowed claim
3 and how it's to be paid pursuant to a plan, there's a sentence
4 that says the amount of thirty million will be directed to the
5 CHR. Now I just want to -- my assumption is that that thirty
6 million comes out of the recovery on the 140 million dollar
7 claim?

8 MR. BUTLER: That's correct, Your Honor.

9 THE COURT: It's not a separate thirty million?

10 MR. BUTLER: No, Your Honor. It's part of the total
11 recovery and it represents a division of how that will be
12 allocated. There's a separate obligation that both -- that all
13 three parties have actually to cause the CHR to enter into a
14 stipulation which we brought to you separately concurring in
15 this settlement.

16 THE COURT: okay. So it's an allocation?

17 MR. BUTLER: Correct, Your Honor.

18 THE COURT: Okay. Then my other question was more of
19 a process question. Paragraph 11 of the order refers to the
20 settlement involving Manufacturing Products Company, MPC, in --
21 this is described in the motion, too. Was MPC involved in
22 this? To some -- as far as I can tell, they may have -- they
23 may have asserted some sort of claim or was this really a claim
24 asserted only by the union?

25 MR. BUTLER: The UAW, Your Honor, filed a claim

1 against Delphi -- I'll give you a little bit of background.
2 Filed a claim against Delphi in connection with MPC, which is a
3 third party, second-tier distress supplier to Delphi.

4 THE COURT: Okay.

5 MR. BUTLER: In connection with dealing with that
6 distress supplier situation, Delphi, along with certain other
7 suppliers entered into an accommodation agreement is common in
8 this -- sort of that aspect of this industry and essentially
9 worked with the unions and with MPC and others to actually
10 cause MPC to be able to produce parts that were needed to be
11 produced until they could be wound down and resourced to
12 others. And then ultimately at the completion of that, and
13 it's my understanding that Delphi was the last supplier
14 standing in terms of that whole process. And when that was
15 done MPC ceased to doing business and the UAW represented
16 workers lost their jobs. And the question was whether Delphi
17 was responsible for certain of the payments there both in terms
18 of the budgets that had been agreed to in connection with the
19 accommodation agreement and just general assertion of claims
20 based on the facts and circumstances. That claim was
21 separately brought in this Court. It's claim number 13270. It
22 has been also -- there have been other proceedings outside of
23 this court in connection with that and it was an integral part
24 of the fabric of the settlement. The UAW took the position
25 that there was going to be a global settlement here. There was

1 going to be a settlement of all claims that the UAW believed
2 that they had against the estate. And that's the reason that
3 this is in here. It's about -- it's something -- I think a
4 million dollars or less. 993,000 in cash severance and
5 vacation payments. And there is a process that's been agreed
6 to between the company and the UAW and how we're going to
7 process each of those individual claims. I will tell Your
8 Honor, behind that part of it there's actually a schedule, sort
9 of social security number by social security number of every
10 employee and what they're entitled to. That documentation, I
11 believe, was shared with the creditors' committee when they did
12 their diligence on this particular issue. So there's a
13 specific --

14 THE COURT: Okay.

15 MR. BUTLER: -- backup --

16 THE COURT: I don't have any problem with the
17 rationale for the resolution. My only issue was this releases
18 the debtors not only from liability to UAW and the employees
19 represented by them, but also to MPC --

20 MR. BUTLER: Right.

21 THE COURT: Was this pre-petition activity? Was this
22 a pre-petition claim?

23 MR. BUTLER: Yes.

24 THE COURT: So -- okay. So, in essence, MPC would be
25 barred --

1 MR. BUTLER: Right.

2 THE COURT: -- because they haven't filed a claim
3 themselves.

4 MR. BUTLER: Yes, Your Honor.

5 THE COURT: So it's kind of ice in winter as far as
6 getting release from MPC is concerned. Was MPC given notice of
7 this motion?

8 MR. BUTLER: I don't know that they were. I'm not
9 even sure that MPC is operating.

10 THE COURT: They may not exist.

11 MR. BUTLER: I know it's not operating. I don't know
12 what the legal condition of MPC is at the moment, Your Honor.

13 THE COURT: All right. But in any event, the only
14 claim filed has been by the UAW?

15 MR. BUTLER: That's correct, Your Honor.

16 THE COURT: All right. Okay. Okay, does anyone want
17 to say anything on the motion for approval of the settlement?

18 MS. CECCOTTI: Your Honor, Babette Ceccotti for the
19 UAW. Again, keeping with the theme less is more, which I agree
20 in this instance, the UAW supports approval of the agreement.
21 Also by prior agreement with counsel, I would like to just
22 confirm, as we did already, the UAW's approval of the form of
23 order including the recitals contained in paragraph 8
24 concerning payment of the allowed claim pursuant to a plan
25 following substantial consummation of the plan.

1 THE COURT: Okay.

2 MR. ROSENBERG: Your Honor, Robert Rosenberg on
3 behalf of the creditors' committee. I will not violate the
4 less is more rule here because I agree with it and I do want to
5 congratulate the parties on reaching a settlement under very
6 difficult circumstances that I think is clearly in the best
7 interest of all concerned.

8 I do want to put a couple of issues on the record,
9 however, one of which was nicely clarified by Mr. Butler, which
10 is that there is no assumption of this agreement until the
11 second half is in place which means an agreement with GM and
12 confirmation of a plan. Obviously, much of the economics in
13 this deal makes sense only if an appropriate agreement is
14 reached with GM for support going forward while other
15 provisions, as Mr. Butler suggested, are appropriately affirmed
16 right now and that's to everyone's advantage.

17 I was a little bit concerned about the language in
18 paragraph 7 of the proposed order because, perhaps only in my
19 own head, it seemed to be perhaps a little bit mutually
20 inconsistent settling while at the same time dismissing without
21 prejudice. But Mr. Butler clarified that as to what it was
22 intended to mean and I'd like that -- that record to be
23 consistent with what is in people's minds with respect to that
24 order.

25 Similarly, while both halves of this UAW deal are, as

1 I suggest, in the best interest of the estate, and that which
2 goes into effect now is essential for moving forward and
3 therefore we're very much on board with this bifurcation, I
4 again emphasize that the whole economic picture only makes
5 sense in the context of an appropriate GM deal. I have every
6 assumption or every belief and confidence that that deal will
7 be reached. But life being what it is, it could either fall
8 apart or end up not being quite as favorable as the assumptions
9 that were built in to this deal. Accordingly, all of that is a
10 longwinded way of saying that while the committee is very
11 supportive of the entry of this order, we are certainly
12 reserving our rights to reconsider whether the agreement should
13 be assumed based upon what does or doesn't come out of a GM
14 settlement.

15 THE COURT: Okay. And by agreement, you're referring
16 to the underlying collective bargaining agreement and by
17 assumption, you're referring to assumption under 365 and 1123?

18 MR. ROSENBERG: That is correct, Your Honor.

19 THE COURT: Okay. All right.

20 MS. STEINGART: Good morning. Bonnie Steingart from
21 Fried Frank on behalf of the equity committee. We fully
22 support the motion that has been made here and the agreements
23 that have been reached with the UAW. We think that the debtor
24 has done an admirable job and we are pleased to support the
25 motion. Thank you.

1 THE COURT: Okay. All right. I will approve the
2 settlement and grant the motion. It's clear to me that the
3 settlement meets all of the test of T&T Trailer Ferry and
4 subsequent case law that it's fair and reasonable and in the
5 best interest of the debtors and their estate, their creditors
6 and their shareholders. It's clearly the result of arms length
7 negotiations not only between the debtor and the UAW but also
8 both of those parties and GM represented by experienced counsel
9 in each instance.

10 It also appears to me to be very thoughtfully
11 negotiated and drafted in respect of the issues that the
12 parties have just discussed, i.e., the parts that are effective
13 immediately and the parts that require and hopefully will lead
14 to the next step in this case, which is the implementation of a
15 Chapter 11 plan, and related settlements with, one hopes, GM
16 and the debtor as well as with the other unions.

17 I did review Ms. Hurley's objection but in
18 considering it, it seemed to me that in addition to the points
19 that I just made, I should note that while the Court's approval
20 of a settlement is one in which the Court considers whether the
21 settlement is in the best interest of the debtor and its
22 constituents and in only the most limited sense should the
23 Court consider the effect on the other party to the settlement
24 and only there in connection with issues of whether there was
25 an arms length negotiation or some other public policy that the

1 Court should be concerned about was violated.

2 It's very clear to me that the UAW here acted very
3 diligently and forcefully to protect its constituents' rights
4 and that that bargaining was ratified by the union through its
5 own democratic processes. So, again, I want to reiterate, this
6 is clearly to my mind an arms length and heavily negotiated
7 settlement. So the order as only very minimally clarified by
8 you on the record today will be entered today.

9 MR. BUTLER: Your Honor, thank you.

10 THE COURT: And I note that it is intended to go
11 effective immediately. And given the overwhelming support for
12 the relief sought and the very clear and beneficial reasons why
13 it should go into effect immediately, I'm going to approve that
14 portion of the motion as well.

15 MR. BUTLER: Thank you, Your Honor.

16 MS. CECCOTTI: Thank you, Your Honor.

17 MR. BUTLER: Your Honor, one -- I had an opportunity
18 with my colleagues to take a look at the MPC timeline and I do
19 want to correct the record that at least a portion of this MPC
20 activity occurred post-petition. It occurred back in January
21 of 2006 which would have been a couple of months after that.

22 THE COURT: But the agreement was based on a -- the
23 agreement that this all stems from was a pre-petition
24 agreement?

25 MR. BUTLER: Well, the accommodation agreement

1 itself, Your Honor, was dated January 24th, 2006 which we
2 disclosed in footnote number 6 to the motion, so --

3 THE COURT: Okay. All right.

4 MR. BUTLER: -- so part of this activity occurred
5 pre, part of it occurred post and I just wanted to make that
6 disclosure to Your Honor.

7 THE COURT: All right. Well, as you say, MPC seems
8 to be out of existence. If the company has any known record of
9 who could receive service of this if they haven't received it,
10 I'd like you to settle the order. Just that portion, that
11 paragraph, of the order on MPC on ten days notice.

12 MR. BUTLER: All right. Your Honor, what I would
13 propose to do is to add a provision to the order, if I may,
14 that would simply require that the relief as to MPC would
15 become effective ten days after service --

16 THE COURT: That's fine. And again, it's just MPC.
17 I just didn't want to

18 MR. BUTLER: Right.

19 THE COURT: -- have someone on who claims to be a
20 trustee or receiver or some entity for MPC come back and say
21 you released us but we didn't agree to it.

22 MR. BUTLER: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. BUTLER: Your Honor, the next matter that's on
25 the agenda is matter number 7. This is the DASE funding motion

1 matter at docket number 8501. And this involves determination
2 by DASHI in its business judgment to provide up to 130 million
3 euro, approximately 177 million, to its wholly owned
4 subsidiary, Delphi Automatic Systems Espana S.L. which we tend
5 to refer to as DASE in dealing with this motion. And as I'll
6 describe in more detail, Your Honor, of the 130 million euro,
7 120 million of that is to fund a separation allowance for
8 employees in a plant that's being closed in Cadiz, Spain and up
9 to ten million euro is to fund payments of the claims of DASE's
10 suppliers and other non-labored creditors.

11 The first thing, Your Honor, I'd like to do here is
12 to present to Your Honor an agreement and stipulation of the
13 receivers of DASE that were appointed by the Spanish court in a
14 Concurso filed in the Spanish court. And I have an agreement
15 and stipulation relating to the separation plan and to the DASE
16 funding motion that is before Your Honor and an agreement and
17 stipulation by them to the jurisdiction of the United States
18 Bankruptcy Court for the southern district of New York. This
19 jurisdictional matter, in my understanding, has been reviewed
20 with the Spanish judge in connection with the Concurso and
21 there is a submission to jurisdiction and an agreement to abide
22 by and comply with all orders and judgments Your Honor may
23 enter in connection with this matter with the limitation that
24 they do not submit to the jurisdiction, that is, the DASE
25 receivers do not submit to the jurisdiction if it would be

1 contrary to the exclusive jurisdiction of the Concurso court,
2 certain matters being reserved simply to the Spanish court or
3 they're contrary to any order the Concurso court directing the
4 actions of those receivers.

5 But I have that stipulation, Your Honor. We will
6 actually file this formally --

7 THE COURT: Okay.

8 MR. BUTLER: -- but I'd like to present it to Your
9 Honor, if I could.

10 THE COURT: Okay.

11 MR. BUTLER: I'd also like to mark it Exhibit A.

12 THE COURT: All right. Does anyone have any
13 objection to that? All right. So that will be admitted. Do
14 they in this document confirm the agreement that's referred to
15 in the motion --

16 MR. BUTLER: Yes, Your Honor.

17 THE COURT: -- that they'll grant the releases if the
18 four conditions are met?

19 MR. BUTLER: Yes, they do, Your Honor.

20 THE COURT: Okay. Right. I see that now. Okay.

21 MR. BUTLER: Your Honor, the second item I'd like to
22 deal with is to present and mark as Exhibit B to the record the
23 declaration of John D. Sheehan, our chief restructuring
24 officer. In support of this, Mr. Sheehan, in addition to being
25 the company's chief restructuring officer is the president of

1 DASHI and was directly involved obviously both in his capacity
2 as CRO and as president of the subsidiary that desires to make
3 this investment in terms of trying to deal with the funding of
4 this as described in the motion. And so, Mr. Sheehan, who the
5 Court's familiar with, is here in court. I'd like to move
6 admission of his declaration. I do note that it's marked
7 highly confidential in connection with the confidentiality
8 provisions we've used with respect to the Court. And I'd like
9 to present Mr. Sheehan for cross-examination by any party.

10 THE COURT: All right. Does anyone want to cross-
11 examine Mr. Sheehan on his declaration in support of the
12 settlement? Okay. Hearing no one I'll accept the
13 declaration --

14 MR. BUTLER: Thank you, Your Honor.

15 THE COURT: -- as a proffer of his testimony.

16 MR. BUTLER: Your Honor, the third matter I'd like to
17 deal with on the record is to make a statement revolving the
18 mechanics of funding of this settlement. And we had indicated
19 both indirectly in the order and directly in the motion that
20 this settlement is going to be funded by funds that are not in
21 the U.S. domestic subsidiaries but in fact are offshore in
22 Europe and Asia. And the statement I'd like to make is as
23 follows. The mechanics that we have agreed on for purposes of
24 funding are that DASHI will receive the funds necessary to make
25 the funding contemplated in this motion through the

1 repatriation of dividends from cash currently on hand at non-
2 debtor entities in Asia and Europe. Because the 120 million
3 euro must be paid no later than August 7th, 2007, it is
4 expected that a portion will be funded up front through
5 dividend repatriations while the balance will be funded through
6 a short term inter company bridge loan to be made to DASHI by
7 non-debtor, non-U.S. affiliate. This inter company bridge loan
8 will be made in compliance with both the DIP refinancing order
9 and a cash management order and will be repaid upon receipt of
10 repatriated dividends which is expected to occur over the next
11 seventy-five days. The funding for payment of the claims of
12 DASE's suppliers and other non-labor creditors to the extent
13 required in the settlement agreement will be in an amount up to
14 ten million euros, will be funded through dividend
15 repatriations, although this amount may also be funded
16 initially by way of an inter company bridge loan from an
17 overseas non-debtor affiliate.

18 Your Honor, we spent a lot of time in connection with
19 the mechanics, as you can imagine, with our statutory
20 committees on how to deal with this issue and explaining the
21 company's business judgment in connection with this and I am
22 pleased that both of our committees have chosen to support or
23 at least not object to the settlement that we wish to proceed
24 with.

25 I also, Your Honor, would like to point out to the

1 Court that we had filed an errata notice in connection with
2 paragraph 14 of the DASE funding motion which inadvertently
3 stated that the cost to DASE to fund forty-five days to sixty
4 days of salary per year of service with respect to each of his
5 employees would cost between 115 and 155 million euro, which we
6 said was approximately between 156 million and 211 million
7 dollars, U.S. dollars. These numbers were based on
8 calculations that were made earlier this year and did not
9 include among other things the accrual of wages for the last
10 month under the social plans in Spain. Until we're able to
11 deal with this in the Concurso, these obligations accrue. And
12 the errata sheet indicated that the expected range of cost to
13 DASE to fund forty-five to sixty days of severance would be
14 between 123 million and 164 million, which is approximately --
15 excuse me, million euro, which is approximately 167 million to
16 223 million U.S. dollars. Obviously, the settlement is for
17 less than that but we wanted to make sure that the record was
18 clear as to the appropriate dollars in paragraph 14, euro and
19 dollar calculations, and we filed that errata sheet on Monday,
20 July 16th to correct that matter.

21 Your Honor, I also would indicate to Your Honor that
22 in the draft order there is a provision that has been put in
23 for the immediate effectiveness of this order. This matter is
24 uncontested. There are further proceedings that have to occur
25 yet this month in Spain with respect to the Spanish Concurso.

1 We believe it is in the best interest of this estate and our
2 stakeholders that the judge in the Spanish Concurso, when she
3 considers this matter, is able to understand that Your Honor's
4 order, if you choose to enter it, is in fact effective.

5 THE COURT: Okay. And is it the debtors' reasonable
6 belief that the three conditions to the full release that are
7 set forth in the receiver's agreement and stipulation will be
8 met?

9 MR. BUTLER: Your Honor, it certainly is our
10 reasonable expectation. It was one of the things that I know
11 because I participated along with my colleague, Ms. Hiastand,
12 who's present in court today who coordinates our European
13 restructuring practice and is here from London for this
14 hearing. We spent a great deal of time with Delphi's European
15 management and with the global management team reviewing these
16 matters and I think -- and Mr. Sheehan certainly can reaffirm
17 his judgment in this. I think it is Delphi's expectation that
18 we will -- the course of action designed in this settlement is
19 in everyone's best interest and that we will meet those
20 thresholds.

21 THE COURT: Okay. Does anyone want to address this
22 motion? All right. I'll note again that it was unopposed. My
23 only concern about the motion was answered quite clearly by the
24 submission of the agreement and stipulation by the
25 Administradores Concursales since I was concerned that I would

1 not necessarily except through the doctrine of comity have the
2 ability to cause the other parties to this agreement in a sense
3 to live up to their portion of it although I would expect that
4 they would in any event. But with the submission of that
5 agreement and stipulation, it's now clear to me that I would
6 have the ability to enforce the agreement if in fact one got to
7 that point. Consequently, I'll approve the settlement and
8 grant the motion, first, because it's unopposed, second,
9 because it sets forth a fair settlement of this dispute and
10 good business reasons for the payments contemplated by the
11 settlement.

12 MR. BUTLER: Thank you, Your Honor. Your Honor, at
13 this point in time, with the Court's permission, there are a
14 number of people here who were here for the uncontested
15 matters. We thought it was very important that Mr. Butler, our
16 lead bargainer, be in court today to present this motion to
17 Your Honor. We are involved, as Your Honor knows, actively as
18 we speak in collective bargaining that is going on back in
19 Michigan right now and with the Court's permission, we'd like
20 to take just a very brief recess to allow people perhaps five
21 minutes to allow us to allow some of our representatives to
22 leave, including Mr. Sheehan and others who need to attend to
23 those matters, and if that's acceptable to Your Honor, we would
24 take about a five minute recess and then deal with the
25 contested matters.

1 THE COURT: That's fine. We just have the Furukawa
2 matter and then the --

3 MR. BUTLER: And the claims objections. It shouldn't
4 be a much longer time. We're just trying to get --

5 THE COURT: The omnibus claim objection. Okay.
6 That's fine. So I'll come back at, say five of eleven.

7 MR. BUTLER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Recess from 10:48 a.m. until 10:58 a.m.)

10 THE COURT: Please be seated. Okay, back on the
11 record in Delphi.

12 MR. BUTLER: Thank you, Your Honor. Your Honor, we
13 have three contested matters on today's agenda. The first is
14 the Furukawa Electric relief from automatic stay, a contested
15 matter at docket number 7410. Mr. Berger represents the
16 company in connection with this contested hearing and I will
17 cede the podium to him and to counsel for Furukawa.

18 THE COURT: Okay.

19 MR. MCELWEE: Michael McElwee for Furukawa, Your
20 Honor. May I proceed?

21 THE COURT: Yes. I was just going to say, you should
22 go near a microphone.

23 MR. MCELWEE: Oh, I will. Given the amount of
24 briefing that's been done in this case, Your Honor, I'd like to
25 restrict myself to really two basic points and they are these.

1 First question is, did Delphi present its 25 million dollar
2 breach of warranty claim to this court in a procedurally
3 correct way. And the second question is, even if Delphi did
4 present its 25 million dollar claim in a correct way, do any of
5 the traditional convenience factors justify adjudicating that
6 case in New York as opposed to Michigan. We think these issues
7 are related for reasons that I'll explain.

8 It is useful, I think, Your Honor, to mention what
9 really are many of the undisputed facts in this case. It's
10 undisputed that Delphi filed its 25 million dollar claim
11 against Furukawa in the state court in Michigan. It's
12 undisputed that they filed that law suit approximately eleven
13 months before they sought protection under the Bankruptcy Code
14 in this court. It's undisputed that that case raises only
15 state law claims. It's also undisputed that Furukawa
16 Corporation and Delphi Corporation are both Delaware
17 corporations and both have their headquarters literally within
18 approximately thirty miles of each other in the suburbs of
19 Detroit.

20 Virtually, every fact that the case has applied to
21 determine the convenience of litigation warrants litigating
22 this case in Detroit or in the Detroit area and not in the
23 Southern District of New York. Both parties are in the suburbs
24 of Detroit. Literally all of the documentary evidence is in
25 Detroit. All of the physical evidence is in Detroit. The

1 lawyers who represent the parties in the Michigan case are both
2 from Michigan. There really is none of the convenience factors
3 that would warrant transferring the case here. Which raises
4 the question how then did Delphi justify filing a duplicate
5 case in this bankruptcy proceeding.

6 THE COURT: Well, could -- maybe I misunderstand the
7 current state of the litigation here but aren't I right that a
8 claim was filed here by Furukawa for breach of contract, the
9 two Furukawa entities, --

10 MR. MCELWEE: Furukawa --

11 THE COURT: There was an objection to the claim.

12 MR. MCELWEE: Yes.

13 THE COURT: There've been or there was at least one
14 meet and confer and maybe more meet and confer sessions after
15 Furukawa responded to the objection. And Delphi has provided
16 its issues list, right?

17 MR. MCELWEE: That's correct.

18 THE COURT: Delphi has not asserted a counterclaim
19 yet, has it?

20 MR. MCELWEE: Well, in its issues list, it very
21 specifically indicated that it wanted the Court to decide its
22 25 million dollar claim here.

23 THE COURT: All right. But it has not teed up the
24 counterclaim for me yet, right? I don't normally get the --
25 the issues list is really for the parties.

1 MR. MCELWEE: Well, Delphi has indicated that it
2 intends to proceed.

3 THE COURT: But it hasn't done that yet, right? And
4 that's an important step because when a debtor formally asserts
5 a counterclaim as part of an objection to a claim, that
6 triggers under Bankruptcy Rule 3007 the adversary proceeding
7 rules.

8 MR. MCELWEE: Correct.

9 THE COURT: That doesn't seem to have happened yet.

10 MR. MCELWEE: Well, if there is no claim pending here
11 on this twenty-five million dollar breach of warranty claim by
12 Delphi in this court, then this is really a very different
13 proceeding today.

14 THE COURT: Well, there's an objection to your claim
15 and there may be a res judicata effect or a collateral estoppel
16 effect as a result of the litigation of that objection. But I
17 just wanted to make sure I understood the current procedural
18 context that I'm operating under.

19 MR. MCELWEE: Well, all of that's right. I mean, I
20 do think some of the details matter for the two. There was the
21 third omnibus objection where Delphi objected only on a books
22 and records basis to Furukawa's claim. They raised no other
23 objection in that third omnibus objection to Furukawa's claim.
24 They then asserted in their response and in the description of
25 the issues in connection with the response that they were going

1 to raise not a books and records objection but that the claim
2 itself lacked merit on the substance of the claim, which is
3 very different than the books and records objection they
4 originally submitted. And when they submitted that proposal to
5 the Court, they indicated in the proposal that they want the
6 Court to decide the twenty-five million dollar claim that's
7 pending in Michigan. Now you are correct, that might not
8 constitute the correct way of placing that claim in front of
9 the Court. In fact, that's one of the points we argue. But
10 that nevertheless is clearly what Delphi's intention is in this
11 case.

12 THE COURT: Okay.

13 MR. MCCELWEE: So our point is this. That if Delphi
14 wants to initiate duplicate litigation in New York that it
15 already has on file in Detroit, it should file a removal
16 petition under Section 1452. It should not attempt to append
17 that claim as part of the claims objection procedure under the
18 third omnibus objection.

19 THE COURT: But isn't it just a flip side of -- they
20 terminated the contract --

21 MR. MCCELWEE: That's correct.

22 THE COURT: -- because they say your clients breached
23 the contract. You filed a proof of claim saying they breached
24 the contract by terminating it. It's the flip side, isn't it?

25 MR. MCCELWEE: That's correct. And we had to file

1 that proof of claim by the bar date or the allowance of our
2 claim in state court would be barred under the claims
3 adjudication rule, procedures under the Code.

4 THE COURT: But the Second Circuit's been pretty
5 clear that that doesn't matter as far as the bankruptcy court's
6 jurisdiction or whether the claim litigation is core or the
7 like, does it?

8 MR. MCELWEE: That's true. The courts have held that
9 that doesn't matter in terms of determining the court's core
10 jurisdiction. But it does matter in terms of the voluntary
11 abstention standards. I mean, under the voluntary abstention
12 standards, this case is pending in state court. Furukawa has
13 the right to a trial by jury and all of the convenience factors
14 warrant maintaining the case in the Eastern District of
15 Michigan

16 THE COURT: Having filed the claim, doesn't the jury
17 trial right go away?

18 MR. MCELWEE: -- rather than the Southern District of
19 New York. Excuse me, Your Honor?

20 THE COURT: Having filed the claim doesn't the jury
21 trial right as to breach go away?

22 MR. MCELWEE: If the case comes here it does. Not if
23 it stays in state court.

24 THE COURT: Well, but the case is here because the
25 claim is filed.

1 MR. MCELWEE: Excuse me, Your Honor?

2 THE COURT: But the issue is here because the claim
3 is filed. The claim of breach.

4 MR. MCELWEE: There is a claim here and the question
5 then is whether the Court will allow the case to be adjudicated
6 in Michigan --

7 THE COURT: But all I'm saying on the jury trial
8 point, having filed a proof of claim here, I can try the case,
9 right? I can try the breach of contract case asserted in the
10 proof of claim?

11 MR. MCELWEE: If there is an objection made on the
12 basis that the contract is unenforceable or that we breached
13 the warranty, that's correct.

14 THE COURT: Okay. Okay.

15 MR. MCELWEE: So, essentially, our argument, Your
16 Honor, is that if you look at what Delphi offered to justify
17 presenting the case here even if it's not properly filed here,
18 is that it gets to adjudicate its twenty-five million dollar
19 claim under the Court's December 6th, 2006 procedural order
20 which is an order that limits the parties to one hour each and
21 to not calling parties --

22 THE COURT: But you know it doesn't do that. You've
23 read the --

24 MR. MCELWEE: I would presume not. But if you look
25 at their papers, there's no other justification for their

1 motion.

2 THE COURT: Well, I assume at the meet and confer you
3 discussed, as paragraph K on page 14 of the procedures makes it
4 very clear you're supposed to, modifications to deal with the
5 specifics of the claim. I assume you discussed that at the
6 meet and confer session.

7 MR. MCELWEE: Well, that's correct. I think the two-
8 hour hearing is plenty fine to adjudicate the original books
9 and records objection that they made. It's not adequate to
10 deal with their twenty-five million dollar counterclaim.
11 That's our point.

12 THE COURT: Well, is it adequate to deal with the
13 breach claim that your client asserted?

14 MR. MCELWEE: Clearly not. And if they were to
15 present an objection to the claim outside the context of the
16 third omnibus objection, the Court would have to deal with that
17 question. But the third omnibus objection was only a books and
18 records objection. It was not an objection to the substance of
19 the claim.

20 THE COURT: You don't think you've had adequate
21 notice of the basis for their objection?

22 MR. MCELWEE: They have indicated in their
23 description of the issues they intend to present, they intend
24 to present those breach of claims to the Court. They've also
25 indicated clearly they want them resolved under the two-hour

1 limitation under the December 6th order.

2 THE COURT: Is that right, Mr. Berger?

3 MR. BERGER: Your Honor, in fact we have discussed
4 paragraph 9(k) of the procedures order and a proposed
5 modification of the discovery, time before Your Honor, number
6 of witnesses, confirmed to Furukawa that if depositions need to
7 happen in Michigan we'll do depositions in Michigan. Documents
8 have already been passed back and forth. All we're talking
9 about happening here is what Your Honor has observed, is a
10 trial on the breach issue. We're fully willing to be
11 accommodative on those other issues.

12 THE COURT: Have you discussed the mediation that's
13 contemplated by the procedures order?

14 MR. BERGER: Not yet, Your Honor. I'm going to be
15 careful about how I describe negotiations other than to say
16 that we were approaching that issue and haven't had response to
17 that.

18 THE COURT: Am I right that from the papers that
19 that's a first step in the -- if the matter were to be brought
20 to Michigan, mediation is a first step?

21 MR. BERGER: Absolutely, yes, Your Honor.

22 THE COURT: Okay. All right. I guess I don't
23 understand why this isn't just a delay tactic.

24 MR. BERGER: Again, I'm having a hard time hearing
25 you.

1 THE COURT: I don't understand why this motion by
2 Furukawa isn't just a delay tactic. You're -- it seems to me
3 you're on full notice of the claim objection. The claim
4 objection procedures contemplate -- and if the debtor for some
5 reason doesn't live up to them you can come back to the court
6 and say they're not living up to them -- adjustments to deal
7 with the particular aspects of the litigation that may require
8 more than the streamlined procedures that generally apply. And
9 the order provides for the very type of mediation that would be
10 the first step in the place where you want to go. And you're
11 wanting to put that off. I don't -- why isn't this just a
12 delay tactic?

13 MR. MCELWEE: Because the case in the state court was
14 pending for eleven months before the bankruptcy filed --

15 THE COURT: And what's happened in it? Have they had
16 the mediation?

17 MR. MCELWEE: We have not had mediation yet in state
18 court --

19 THE COURT: Have they had any discovery?

20 MR. MCELWEE: Yes. We're completed with written
21 discovery, interrogatories --

22 THE COURT: Have you asserted the counterclaim?

23 MR. MCELWEE: We couldn't assert the counterclaim
24 because of the automatic stay.

25 THE COURT: And you've had any -- what fact discovery

1 have you had?

2 MR. MCELWEE: Excuse me, Your Honor?

3 THE COURT: What fact discovery have you had?

4 MR. MCELWEE: We've completed all of the written
5 discovery, interrogatories have been exchanged, document
6 requests have been exchanged, we're tying up the last details
7 about the exchanging of certain engineering reports that are
8 important to the outcome of the case. And we're ready to start
9 depositions.

10 THE COURT: Has the court had any involvement in the
11 matter?

12 MR. MCELWEE: The court has had involvement. I'm not
13 sure exactly what the court means. But the court has entered a
14 pre-trial order. It's established deadlines. The parties have
15 agreed to extend those deadlines from time to time. The courts
16 have sort of --

17 THE COURT: So it's been pending for how long?

18 MR. MCELWEE: It's been pending since, I think, late
19 October of 2005.

20 THE COURT: Has there been any activity since the
21 petition date?

22 MR. MCELWEE: Very little since the petition date.
23 The case has been consistently adjourned since the petition
24 date because Delphi represented at the parties that it was too
25 busy with its reorganization to attend the case.

1 THE COURT: Well, why would it be going forward in
2 any event given the automatic stay?

3 MR. MCELWEE: Well, it is an affirmative claim filed
4 by Delphi in state court. There isn't any automatic stay that
5 prevents the case from going forward.

6 THE COURT: It was pre-petition.

7 MR. MCELWEE: Excuse me, Your Honor?

8 THE COURT: It's pre-petition but there's been no --
9 there's been very little activity since the petition date, you
10 say?

11 MR. MCELWEE: It's been adjourned several times since
12 the petition date because Delphi has told us they don't have
13 the time to attend to the case because they're so busy with
14 their reorganization.

15 THE COURT: Okay. And there's been no counterclaim
16 asserted?

17 MR. MCELWEE: No. The counterclaim was asserted by
18 way of a proof of claim filed in this case.

19 THE COURT: How could you have completed document
20 discovery if you haven't asserted the counterclaim?

21 MR. MCELWEE: Because we're producing and discovering
22 documents related to Delphi's affirmative claims against
23 Furukawa.

24 THE COURT: Okay.

25 MR. MCELWEE: That's really all I have, Your Honor.

1 THE COURT: Okay.

2 MR. MCCELWEE: Thank you.

3 MR. BERGER: Your Honor, I'll be very brief. The
4 reason that our omnibus claim objection was a books and records
5 objection is that we didn't have anything on record as an
6 obligation to Furukawa. Furukawa never filed a counterclaim in
7 the state court action. It filed its counterclaim by way of
8 the proof of claim. I think as Your Honor has observed from
9 our papers and from the comments I hear today, there is, from
10 the debtor's opinion, no way to adjudicate the claim objection
11 without consideration of Delphi's defense, which Furukawa must
12 have anticipated to have been our affirmative claim against
13 Furukawa.

14 The action was stayed. It did not proceed. The
15 debtors chose instead to challenge the Furukawa claim as part
16 of the claim objection process. I think what Mr. McElwee is
17 trying to articulate to Your Honor is that a part of what I
18 represented to the Court the last time I was here is that we
19 worked through the Memorial Day weekend to get through
20 confidentiality issues pertaining to certain engineering
21 reports. We've agreed to confidentiality. We provided those
22 engineering reports to Furukawa. That's the document
23 production that's been going on. We heard nothing since two
24 days after that weekend.

25 THE COURT: I'm sorry. So the document production

1 was

50

2 MR. BERGER: In connection with the claim objection
3 proc --

4 THE COURT: -- in connection with this claim
5 objection not the

6 MR. BERGER: Here, Your Honor.

7 THE COURT: -- Michigan action?

8 MR. BERGER: Yes.

9 THE COURT: Is that right?

10 MR. MCELWEE: No. We asked for the -- they're called
11 (indiscernible) reports. We asked for both of those reports in
12 our state court discovery. Delphi consistently indicated that
13 they refused to supply the report because they were
14 confidential. We agreed to a protective order in the state
15 court case to facilitate the production of those reports. They
16 still weren't produced. So then we engaged in lengthy
17 negotiations with Delphi to get the documents produced. But I
18 was operating under the assumption given that lengthy history
19 that those documents were produced in the context of the state
20 court case not in the bankruptcy case.

21 THE COURT: Notwithstanding the discussions that
22 resolved this were done as a result of the meet and confer
23 sessions under the claims procedure order?

24 MR. MCELWEE: We did have meetings under the claims
25 procedure order, that's correct.

1 THE COURT: Okay.

2 MR. MCCELWEE: The parties then conferred as part of
3 the --

4 MR. BERGER: Your Honor, I have nothing left to
5 address concerning statements that Mr. McElwee said. I think
6 our papers are clear. We think this is a core proceeding. We
7 don't think that there's any basis for abstention. There's no
8 basis for relief from the automatic stay. If we need to, we
9 will confront abstention issues in connection with removal or
10 counterclaims under 157(b)(2)(C). But I did want to finish my
11 statement by referring to the agreement of confidentiality. We
12 produced those documents two days after that holiday weekend.
13 We heard nothing in exchange until forty-eight hours ago. And
14 we got a letter from Mr. McElwee for the first time identifying
15 eight witnesses. So we've joined in Your Honor's observation
16 that, at least from the debtors' perspective, this is just
17 sidewise movement. We'd like to move forward, agree on a
18 discovery schedule, take depositions wherever it's convenient
19 for the parties and then come back to Your Honor and have this
20 claim resolved.

21 THE COURT: Okay. Well, when you say this claim, let
22 me make sure I understand that. When you say this claim, you
23 mean the claim that Furukawa has filed?

24 MR. BERGER: Yes, Your Honor. But as part of that,
25 Your Honor, we think, would have to consider the affirmative

1 claim asserted by Delphi against Furukawa. I understand the
2 procedural issue whether or not, not that I doubt that, in the
3 context of a claim objection process Your Honor could be asked
4 to enter a judgment for an affirmative monetary recovery
5 against Furukawa.

6 THE COURT: Well, you can join the objection. You
7 could --

8 MR. BERGER: I could.

9 THE COURT: You could with the demand for relief, you
10 know, affirmative demand for relief. But that hasn't been done
11 yet, I gather.

12 MR. BERGER: It has not been yet but I think that it
13 could happen and one of the things we would obviously explore
14 is 157(b)(2)(C) which expressly provides that counterclaims by
15 the debtor against parties that file claims in the estate can
16 be considered to be core. But we're not there yet, Your Honor.
17 We're in a claim objection process.

18 THE COURT: Okay. So right now, the process you're
19 dealing with is one where you, simply, on the merits or through
20 a settlement, want to defeat the proof of claim that's been
21 filed for breach?

22 MR. BERGER: That's right.

23 THE COURT: You're reserving your rights as to
24 whether that may at some point translate through res judicata
25 or collateral estoppel or some other preclusive doctrine on the

1 merits --

2 MR. BERGER: Correct, Judge.

3 THE COURT: -- of the affirmative relief that you
4 think that you may be entitled to.

5 MR. BERGER: That's correct, Judge.

6 THE COURT: And you're reserving your rights whether
7 you want to join a request for affirmative relief with the
8 claim objection?

9 MR. BERGER: That is correct, as well, Your Honor.

10 THE COURT: Okay.

11 MR. MCELWEE: Can I make just one additional
12 comment -- well, actually, two, Your Honor?

13 THE COURT: Yes. Sure.

14 MR. MCELWEE: First of all, I hope the Court
15 understands that Delphi's papers are full of representations
16 that it is now pressing the twenty-five million dollar claim as
17 part of this case.

18 THE COURT: I didn't see that.

19 MR. MCELWEE: If that's not true, then that's fine.

20 THE COURT: I just didn't see that. I really don't
21 see it in their papers. In any event, it's not.

22 MR. MCELWEE: The other issue we are now going to
23 have two cases involving the same substantive breach argument,
24 one pending in New York and one pending in Michigan which is
25 going to involve a res judicata. The question is which court

1 is going to get to a judgment first and therefore which court's
2 judgment will be res judicata from the other -- there are lots
3 of comity reasons why that kind of proceeding is not favored
4 under American law.

5 THE COURT: Well, you don't believe that your claim
6 is a compulsory counterclaim for breach?

7 MR. MCELWEE: Not under Michigan's purpose --

8 THE COURT: No? Okay. All right. I have a motion
9 before me by Furukawa Electric North America APD. and Furukawa
10 Electric Company Ltd. for abstention on both a mandatory and
11 alternatively a discretionary basis. And in addition, for
12 relief from the automatic stay for cause under Section
13 362(d)(1) to permit Furukawa to be sued in a pre-petition state
14 court action and, I gather, to permit Furukawa to raise a
15 counterclaim in that action. And finally, for an order
16 "limiting the scope of the claim objection hearing" scheduled
17 by the debtors previously in the case.

18 The movant Furukawa appears at oral argument to have
19 abandoned its claim that mandatory abstention is required here
20 under 28 U.S.C. Section 1334(c)(2) but in any event, to be
21 clear, it's not required here because the claim objection is an
22 objection to a filed proof of claim by Furukawa of the two
23 Furukawa entities in this case and as a result, under 28 U.S.C.
24 157(b)(2), that matter, that claim objection is a core matter
25 arising under the Bankruptcy Code and under well-established

1 case law that fact precludes mandatory abstention.

2 Furukawa argued that it should be relieved of that
3 result because it filed its proof of claim as a consequence of
4 the bar date and would otherwise be precluded from filing its
5 breach of contract claim. But that argument is unavailing in
6 light of clear second circuit precedent, including *In re S.G.*
7 *Philips Constructor's, Inc.*, 45 F.3d 702 (2d Cir. 1995).

8 A clear example of how the filing of the proof of
9 claim changes the abstention analysis can be found in *In re*
10 *Asousa Partnership, A-S-O-U-S-A*, 276 BR 55 (Bankruptcy ED
11 Pennsylvania 2002) in which there had been a pre-petition state
12 court law suit based on state court causes of action brought by
13 the debtor. The bankruptcy court consequently abstained.
14 Thereafter, in response to a bar date order, the defendant in
15 that action filed a proof of claim arising out of the same
16 facts and the Court determined because the objection to the
17 proof of claim was a core matter, and indeed the counterclaim
18 was a core matter, that is, the original claim brought by the
19 debtor and now a counterclaim to the proof of claim brought by
20 the debtor was a core matter under 28 U.S.C. 157(b)(3) that it
21 would not abstain as to the adjudication of the claim objection
22 and the related counterclaim.

23 There is an alternative reason for denying the
24 request for mandatory abstention is that is I did not believe
25 that the request is timely made given that the litigation in

1 the state court has been proceeding for well over a year. But
2 more importantly, that as did the claimant in S.G. Philips,
3 Furukawa here did not seek either state relief or abstention
4 until well after the implementation of the claims procedures
5 put in place by my prior order in this case that we're dealing
6 with this its claim.

7 Furukawa also requests discretionary abstention, also
8 under 28 U.S.C. Section 1334. The Court may exercise its
9 discretion under 1334(c) to abstain on a discretionary basis
10 even in a non-core matter. However, abstention under Section
11 1334(c)(1) should be used rarely or invoked by the Court
12 rarely, particularly where the proceeding is a core matter.
13 Contrary to Furukawa's suggestion in its surreply papers, Judge
14 Lifland didn't invent that notion in his recent opinion in In
15 re Cow Pine Corporation. Rather, it's been well-settled under
16 the law of the southern district. See, for example, In re Rob,
17 139 BR 791 (Bank. S.D.N.Y. 1992).

18 Here where the basis for the request for
19 discretionary abstention under 1334(c)(1) is that there's a
20 pending state court law suit to which Furukawa would join its
21 claim here as a counterclaim. I have considered the factors
22 laid out by the Courts in determining whether one should
23 permissibly abstain, which are also laid out at Judge Lifland's
24 Cow Pine opinion, 2007 WL 39124 at page 3 (Bank. S.D.N.Y.
25 2007). And I concluded that those factors do not support

1 permissive abstention. Obviously, the debtor has to deal with
2 the claims process here in its case. The Court has previously
3 on notice to all claimants adopted claims management procedures
4 to permit the efficient yet fair liquidation of claims asserted
5 against the estate, including Furukawa's claim which is in
6 excess of 2.5 million dollars.

7 And so, therefore, as far as the affect on the estate
8 and the efficient administration of the estate, consistent with
9 this matter being a core proceeding, the bankruptcy court is
10 the proper court for the liquidation of Furukawa's claim.

11 Moreover, other considerations do not support
12 abstaining in light of the action pending in Michigan state
13 court. First, the Michigan action and its flip side, the claim
14 here, do not appear to turn on state law issues that are
15 unsettled as opposed to state law issues that involve the
16 interpretation of contracts and weighing disputed factual
17 assertions as to breach. The Courts in this circuit have
18 focused on the unsettled nature of state law as a primary
19 reason for it deferring to a pending state court action under
20 1334(c)(1). See *In re Pan Am Corporation*, 950 F.2d 839 (2d
21 Cir. 1991).

22 I do not believe that trying the claim objection will
23 unduly burden the Court's docket. The question of whether the
24 issue of burden is particularly appropriate for me to consider
25 in the first place given that this is a core matter, given that

1 Furukawa filed a proof of claim here, the claim objection can
2 be tried without a jury.

3 And finally, it does not appear to me that the state
4 court action has progressed in any meaningful way and that the
5 only real breakthrough in connection with document exchange
6 occurred as a result of the meet and confer procedures
7 contemplated by my claims management order. I'll also note
8 that that order contemplates, for a claim of this size,
9 mandatory non-binding mediation before trial of the action
10 which is also contemplated under Michigan law. It's clear to
11 me that that mediation would occur promptly here and that if
12 there's any sense of forum shopping, I believe it's on
13 Furukawa's part. Not so much forum shopping but in a sense of
14 desiring to delay both mediation and trial which I believe
15 would ensue as a result of abstention.

16 I also note that Furukawa has presented no evidence
17 that the Michigan action would proceed expeditiously and would
18 determine its counterclaim, its claim here and it's clear there
19 would be a counterclaim in the Michigan action. And it's its
20 burden to do so under Section 1334.

21 So for those reasons, I'll deny the motion to abstain
22 either on a mandatory or permissive basis.

23 As far as the request for limiting the scope of the
24 debtors' claim objection, the request, I think, falls into two
25 categories. The first, I think, was dealt with at oral

1 argument but let me reiterate. The procedural posture of the
2 claim objection at this point is that it is just that, a claim
3 objection. It may end up having a preclusive affect if tried
4 and decided against either party in respect of any affirmative
5 recovery that the debtor would seek from Furukawa. But at this
6 point it is simply a claim objection. The debtor has the
7 option of joining in that claim objection a request for
8 affirmative relief similar to their request that it made of the
9 Michigan court pre-petition. But I don't believe it has done
10 that yet. If and when it does that, under Rule 3007, that
11 triggers the adversary proceeding rules.

12 Frankly, given the nature of this claim objection
13 itself, I believe and I believe the record on the claim
14 objection procedures motion and the order that ensued from that
15 made this clear as well, that order contemplates that the
16 parties will meet and confer in light of the nature of the
17 objection and the nature of the proof that would be required in
18 the claim objection litigation to modify the discovery and
19 trial procedures laid out in the claim procedures motion -- I'm
20 sorry, the claim procedures order as set forth in paragraph
21 9(k). And that if that exercise were conducted in good faith,
22 the adversary rules would in essence be followed in any event.
23 And if there was no agreement, the parties under the claim
24 objection procedures order could come back to me as well as
25 they can assert rule 3007.

1 The fact that there is a pending state court
2 litigation brought by Delphi has been suggested by Furukawa to
3 mean that there will be a potential for dual track litigation,
4 inefficiency and ultimately contradictory court rulings. I
5 don't believe that is the case. As I noted, Furukawa has yet
6 to assert its counterclaim in the state court litigation. It
7 seeks relief from the automatic stay here to do so. And it's
8 hard for me to see that litigation proceeding without that
9 counterclaim being asserted.

10 Moreover, given the exigencies of this bankruptcy
11 case, which is on a relatively fast track at this point, and
12 the creditors' concern in negotiating the framework for a plan
13 on the prompt liquidation of claims and even the liquidation of
14 claims so that they -- the allowed claims fall within a certain
15 threshold number, it appears likely to me that either the
16 debtor will succeed in withdrawing or staying the Michigan
17 action or withdrawing it without prejudice in light of the
18 process here or that this process will be completed first.

19 In that regard, I do not see a basis on the record
20 before me for lifting the automatic stay to permit Furukawa to
21 raise its counterclaims in litigation in Michigan that the
22 debtor is not pursuing. And I do that for the same reasons
23 that I denied permissive abstention which overlap with the
24 Sonax factors.

25 So, Mr. Berger, you can submit an order denying the

1 motion for those reasons.

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2 Okay. So this leaves the omnibus objection?

3 MR. BUTLER: Yes, Your Honor. There are two omnibus
4 objections to deal with in connection with the remaining
5 matters on the agenda. The first of those is matter number 9,
6 the sixteenth omnibus claims objection filed at docket number
7 8271. This related to twenty-six claims. They're either
8 duplicative of other claims or have been amended or superseded
9 by later filed claims or protective in nature.

10 With respect to these claims, Your Honor, the debtors
11 received five timely filed formal responses which covers twenty
12 of the twenty-six claims as a result under the protocol we've
13 been using with respect to these omnibus claims objections.
14 Today we're seeking relief only with respect to the uncontested
15 claims. Those involve six claims asserting liquidated claims
16 of approximately 1.2 million and we are prepared to adjourn the
17 hearing with respect to the twenty claims covered by the five
18 response and put those on the claims track. We filed an
19 omnibus reply with respect to -- and have the charts indicating
20 where those are and I've submitted a proposed order to Your
21 Honor.

22 THE COURT: Okay. Does anyone have anything to say
23 in respect of the sixteenth omnibus claim objection as
24 modified? That is, the relief that's being sought today.
25 Okay, in light of the fact that the debtors are just going

1 forward with respect to claim objections that are unopposed,
2 I'll grant the sixteenth omnibus as modified.

3 MR. BUTLER: Thank you, Your Honor. Your Honor, the
4 last matter on the agenda --

5 THE COURT: Can I --

6 MR. BUTLER: I'm sorry.

7 THE COURT: Let me make sure. The claimants have
8 gotten a copy of your -- or will get a copy of your revised --
9 or your reply that has the revised chart?

10 MR. BUTLER: Yes. That's sent out to everybody who
11 objected, Your Honor.

12 THE COURT: Very well. Thank you.

13 MR. BUTLER: Okay. Your Honor, matter number 10 on
14 the agenda is the seventeenth omnibus claims objection filed at
15 docket number 8270. This one deals with 257 claims on a broad
16 number of substantive bases. Of the 257 claims, Your Honor may
17 recall that there were forty-one claims on Exhibit E-2 of the
18 seventeenth claims objection listing certain claims filed by
19 taxing authorities or asserting the modification that had the
20 claims classification headings mislabeled. We have reserved
21 those out and we noticed those and adjourned those to the next
22 omnibus hearing in August. I described that earlier to Your
23 Honor. So that of the 257 claims, take the forty-one claims
24 off that were at E-2, that takes us down to 216 claims that are
25 before the Court today. And of those 216 claims, we received

1 responses that covered sixty-six of those claims and raised one
2 or more level of substantive objections or we received
3 objections or in the case of a couple of the claims, we've had
4 discussions with claimants and agreed to move those
5 objections -- to move those matters to a subsequent hearing.

6 So, as a result of that, Your Honor, we're dealing,
7 in terms of going forward today, with 150 claims asserting
8 liquidated claims of approximately 27.6 million. Of those, we
9 seek to expunge twenty-seven claims with an estimated asserted
10 claims of about 1.6 million. With respect to the remaining 123
11 claims that assert 26 million, we're seeking various bases of
12 relief including reducing some of those claims to a total of
13 17.6 million in the aggregate. Therefore, there is a base
14 reduction here of about 8.4 million if Your Honor grants the
15 relief today.

16 THE COURT: Okay. Then again, this is -- you've
17 carved out of the relief that you're seeking today any claimant
18 who has responded and also claimants who you've agreed to give
19 an adjournment to?

20 MR. BUTLER: Correct.

21 THE COURT: Okay. All right.

22 MR. BUTLER: So with respect to those who gave a
23 response, Your Honor, there were forty-two responses filed,
24 those -- covering sixty-four proofs of claim, those will go
25 over to the omnibus claims track and be dealt with on the

1 claims track process. We did agree with respect to Tyco (ph.)
2 Electronics Corporation, for example, with respect to claim
3 10707, to extend their response deadline to August 4th and
4 their portion of this claims objection to the August 16th
5 omnibus hearing, we're continuing to have negotiations with
6 that. We did the same thing with respect to a claimant by the
7 name of Conestoga -- Conestoga, I think it's called -- Rovers
8 and Associates, Inc. C-O-N-E-S-T-O-G-A---R-O-V-E-R-S &
9 Associates, Inc. They asserted a liquidated claim of about
10 63,000 and we've agreed to adjourn that to next one as well.

11 THE COURT: Okay.

12 MR. BUTLER: So there's two really going forward next
13 month. There are sixty-four that are going over into the
14 claims track. The relief we're seeking is to the 150 claims as
15 I described them to Your Honor.

16 THE COURT: And you've sent a copy of your revised
17 chart or your response to the claimants?

18 MR. BUTLER: To the objectors.

19 THE COURT: To the objectors?

20 MR. BUTLER: Yes, Your Honor. They got served in
21 connection with the omnibus reply.

22 THE COURT: All right. Does anyone have anything to
23 say on this seventeenth omnibus -- not actually -- not the
24 seventeenth omnibus, the adjourned omnibus. All right. In
25 light of the nature of the relief the debtors are seeking today

1 which is uncontested relief, I'll grant the omnibus objection.

2 MR. BUTLER: Thank you, Your Honor. Your Honor, two
3 other quick matters for the Court that I wanted to advise Your
4 Honor. On one with respect to the Catalyst sales motion which
5 Your Honor approved at the last -- in terms of bidding
6 procedures with respect to the last omnibus hearing and it's
7 scheduled to come up for approval at the next omnibus hearing
8 in August, I did want to advise Your Honor that after the
9 deadline in that order for the service of cure notices and
10 assumptions and assignments, we identified an additional forty
11 contracts that had not been -- the vendors to which had not
12 been given any notice. We served notices on them on July 18th
13 under the procedures order but for the fact that there was a
14 deadline for service, they're actually receiving twelve days
15 notice which is more than the procedures require, which is ten
16 days to provide a response. So they will have until July 30th
17 to object to the notices we gave them as it relates to
18 assumption and assignment. There are some of them that may get
19 cure notices. They'll have those notices as well and that will
20 be well in advance of the August 16th hearing. I just wanted
21 to indicate to Your Honor and I'll indicate again at the
22 Catalyst hearing next month, that the actual service date was
23 somewhat later than Your Honor's order had indicated but I
24 don't think there's any prejudice because people still have the
25 same period of time to consider the notices.

1 THE COURT: And there's basically a month before the
2 hearing, too?

3 MR. BUTLER: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. BUTLER: So I just wanted you to be aware of
6 that.

7 THE COURT: That's fine.

8 MR. BUTLER: The other thing, Your Honor, just to
9 confirm, we're back here at 2:00 for a chambers conference on
10 1113/1114, on the 365 matters and on the required EPCA chambers
11 conference based on the prior orders of the Court.

12 THE COURT: Right. Okay. So I'll see you then. At
13 2:00.

14 MR. BUTLER: Thank you.

15 (Whereupon these proceedings were concluded at 11:47
16 a.m.)

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E X I B I T S

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DEBTORS' DESCRIPTION

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Declaration of John Sheehan & Kevin

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Butler in support of UAW 1113/1114

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settlement

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A Stipulation and agreement of

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Concurso Court relating to separation

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plan and DASE funding motion

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B Declaration of John Sheehan,

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president of DASHI, Inc. in support

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of DASE settlement

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R U L I N G S

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DESCRIPTION

PAGE LINE

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Mexico Brake sale motion approved

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Motion for an order pursuant B.R. 9019

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23

Approving Settlement Between Wachovia

24

Bank and Lextron Corporation granted

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2

3 I N D E X, CONT'D

4

5 R U L I N G S

6 UAW 1113/1114 settlement approval	27	2
7 motion granted		
8		
9 DASE funding motion granted	60	23
10		
11 Furukawa Electric North American APD		
12 and Furukawa Electric Co., Ltd.'s		
13 motions for abstention pursuant to 28		
14 U.S.C. Section 362(d), relief from		
15 automatic stay and limiting scope of		
16 third omnibus claim objection hearing		
17 all denied		
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19 16th omnibus objection granted with	61	25
20 respect to uncontested claims		
21		
22 17th omnibus objection granted with	64	24
23 respect to uncontested claims		
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25		

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C E R T I F I C A T I O N

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I Lisa Bar-Leib, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, except where, as indicated, the Court has modified its bench ruling.

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July 20, 2007

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Signature of Transcriber

Date

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Lisa Bar-Leib

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typed or printed name

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